

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

UNITED STATES OF AMERICA

§

§

vs.

§

CRIMINAL NO. 4:04CR7

§

ROBERT JOHN RATER

§

**MEMORANDUM OPINION AND ORDER**

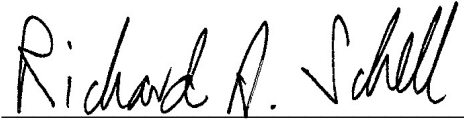
Pending before the court is Defendant Robert John Rater's "Motion / Request for Credit Toward Service of Term of Imprisonment and / or Time Spent in Official Detention Pursuant to 18 U.S.C. § 3585" (docket entry #36) filed on December 12, 2005 and the Government's response thereto (docket entry #38). The Defendant is challenging the manner in which his sentence is being implemented. Federal prisoners who are challenging the implementation of their sentences must present their challenges in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the district court having jurisdiction over the prisoner or his custodian. *United States v. Gabor*, 905 F.2d 76, 78 (5th Cir. 1990). Thus, the Defendant should have filed his motion pursuant to 28 U.S.C. § 2241. This court, accordingly, construes the Defendant's motion as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Defendant is in custody at the Federal Medical Center in Lexington, Fayette County, Kentucky. Therefore, the petition should have been filed in the United States District Court for the Eastern District of Kentucky. It is accordingly

**ORDERED** that the Clerk of Court shall assign the Defendant's 28 U.S.C. §2241 petition a new cause number and transfer the same to the United States District Court for the Eastern District of Kentucky. 28 U.S.C. § 2241(b).

IT IS SO ORDERED.

**SIGNED this the 6th day of February, 2006.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath the name.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE